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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,972	03/10/2004	Yi Ding	M-15297 US	6257
32605	7590	06/29/2005	EXAMINER	
MACPHERSON KWOK CHEN & HEID LLP 1762 TECHNOLOGY DRIVE, SUITE 226 SAN JOSE, CA 95110				BOOTH, RICHARD A
ART UNIT		PAPER NUMBER		
2812				

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/797,972	DING, YI
	Examiner	Art Unit
	Richard A. Booth	2812

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 April 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
 4a) Of the above claim(s) 12-24 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-11 and 25-32 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0404</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of group II in the reply filed on 4/8/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Roth et al., U.S. Patent 5,543,339.

Roth et al. shows the invention as claimed including a method for manufacturing an integrated circuit, the method comprising: forming a plurality of first conductive gates 52 for nonvolatile memory cells, the first conductive gates being spaced from each other and not electrically interconnected; forming a plurality of conductive floating gates 13 for the memory cells; forming a plurality of second conductive gates for the memory cells (note that a select gate can be formed separately as disclosed at col. 6-lines 1-2); and forming at least one conductive line 91 electrically interconnecting two or more of the first conductive gates (see figs. 1-11 and col. 2-line 35 to col. 6-line 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roth et al., U.S. Patent 5,543,339.

Roth et al. is applied as above but does not expressly disclose the order of formation of the gates and lines, the thickness of a dielectric to insulate the floating gate from the conductive line, wherein the conductive line is a metal line, forming at least one conductive line which provides the second conductive gates to at least two adjacent columns of the memory cells, and wherein a plurality of the second conductive gates are interconnected by a conductive line perpendicular to the conductive lines.

With respect to the order of formation of the gates and lines, the selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results (see *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946)). Moreover, regarding the thickness of the dielectric, the range disclosed in the reference overlaps the range of claim 5, and therefore a *prima facie* case of obviousness exists (see MPEP 2144.05). Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine through routine experimentation the optimum dielectric thickness based upon a variety of factors

including the desired degree of protection for the floating gate and would not lend patentability to the instant application absent a showing of unexpected results. With respect to interconnecting the second conductive gates with a line perpendicular to the one conductive line previously claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to connect the select gates by a line running perpendicular to the at least one conductive line because in such a way columns of memory cells can be controlled.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11 and 25-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 and 28-37 of copending Application No. 10/798,475. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the '475 application are generic to the claims of the instant application and therefore under

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a one-way test of obviousness type double patenting a prima facie case of obviousness is established..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Claims 10-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if a terminal disclaimer were filed with respect to 10/798,475.

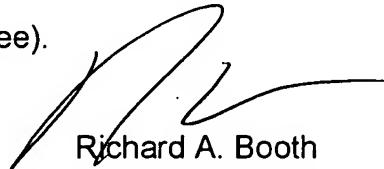
Claims 25-32 are allowed if a terminal disclaimer is filed with respect to 10/798,475.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A. Booth whose telephone number is (571) 272-1668. The examiner can normally be reached on Monday-Thursday from 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Lebentritt can be reached on (571) 272-1873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard A. Booth
Primary Examiner
Art Unit 2812

June 25, 2005